The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Viereck Company

File: B-227089; B-227105

Date: August 14, 1987

DIGEST

1. Protest that agency improperly rejected proposal for failure to comply with solicitation requirement for honing machine column design is denied where protester fails to show that its offer complied with specification or that specification was ambiguous.

2. Protest that design specification was unduly restrictive of competition is denied where performance specification which justifies design specification is stated in solicitation and protester fails to show that the requirement is unreasonable or that its own nonconforming product meets the performance specification.

DECISION

Viereck Company protests the rejection of its offers as technically unacceptable and the award of two contracts to Barnes Drilling Company under requests for proposals (RFP) No. F42650-87-R0001 and RFP No. F42650-87-R0002 issued by the Department of the Air Force for vertical honing machines. RFP No. -R0001 called for a 15 horsepower vertical honing machine with a fixed position work table, a capacity for 8-inch diameter bores, and a minimum stroke length of 60 inches. RFP No. -R0002 called for a smaller, five horsepower honing machine with a vertical and lateral direction manually operated work table, a capacity for 6-inch diameter bores, and a minimum stroke length of 40 inches.

The Air Force found Viereck's offers technically unacceptable because the machines it offered did not comply with the requirement in both solicitations that the column of the machines be of "box design." Viereck maintains that the machines it offered are of box design and were "in full compliance" with the solicitation requirements. We deny the protests.

On October 10, 1986, the Air Force canceled two previous solicitations for these requirements so that the specifications could be revised to allow for the continued use of the drill coolant system then in use at the installation and to require a piston component drawing and tooling designed for use with that component. The two RFPs with which these protests are concerned are the resolicitations, issued on November 14, 1986, for the two earlier requirements.

Concerning the base and column assembly for both machines, paragraph 5.1 of the purchase specification incorporated in the two RFPs states:

> "The base and column assembly shall be either an integral casting or a fabricated weldments rigidly and accurately bolted together. If separate structures, each shall have accurately machined pads at their connecting points and the structures shall be doweled and rigidly bolted together. The column shall be of the box design with the slide bars or ways mounted on the front of the column. (Emphasis added.)
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> "The base and column shall be ribbed and braced to minimize distortion and deflection and enable the machine to perform at its maximum designed honing accuracies specified herein."

Of the four proposals received in response to each solicitation, two were found acceptable. Upon initial evaluation of offers, the Air Force determined that Viereck offered a design with four vertical sliding bars supported by a column lacking the cross bracing which is characteristic of a box design. The agency then requested clarification from Viereck as to whether the columns of the machines it offered were of a box design. In response, Viereck provided the Air Force with pictures of a vertical honing machine "similar" to that which it offered "to demonstrate our compliance to paragraph 5.1."

The Air Force subsequently determined upon its "best and final review" of offers that the information and pictures supplied by Viereck did not show a box design column, but rather showed "a vertical plate with an inclined plane, wedge, or gusset to reinforce the vertical structure." According to the agency, in standard industry terminology, a box design column has four steel plate sides welded

together.1/ The agency thus determined that the machines offered by Viereck were technically unacceptable.

In support of the contention that its offer was conforming, Viereck has submitted to our Office a two-page handwritten "comparative design study," dated June 15, 1987, which proposes to demonstrate by diagrams and calculations that a three-sided column (U-shaped in cross-section) can be designed to provide an equal amount of strength to resist deflection or deformation as does a four-sided box design. As further evidence that the machines it offered "have been accepted by both private and government standards as having a box design," the protester provided a commercial brochure for power squaring shears2/ which shows a three-sided bed that is referred to as a box-type. The protester also provided copies of two contracts which it states were awarded to Viereck by the Department of the Navy for vertical honing machines, the base and column of which were required to be "rigid, box type structures." Essentially, the protester reasons that since its machine was acceptable for purposes of the Navy's requirement for a "box type structure," the machines it offered in response to the subject solicitations must also meet the Air Force's requirement.

The protester points out that the RFPs themselves did not define "box design" and it argues that the term reasonably can be interpreted to include the design of the machines it offered as well as the interpretation placed upon it by the Air Force.

That specifications must be sufficiently definitive so as to permit competition on a common basis is a basic tenet of federal procurement law. Therefore, specifications must not be ambiguous--that is, subject to more than one reasonable

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1/ Attached to the agency's description is a copy of printed information which references American Institute of Steel Construction specifications for structural buildings, showing box column diagrams and formulas stated to be of potential value in designing "certain classes of machinery where the most precise values are required" for safety and maximum economy.

2/ The shears are manufactured by the Famco Machine Division of Belco Industries, Inc. We find no indication of record that any relationship exists between Famco and the manufacturer of the vertical honing machines offered by Viereck.

interpretation. Nasuf Construction Corp.--Reconsideration, B-219733.2, Mar. 18, 1986, 86-1 C.P.D. ¶ 263. Our Office will reject allegations that specifications are subject to more than one interpretation if those allegations are based on an unreasonable or dubious interpretation of the solicitation and the requirements are stated clearly. American Industries, B-223530, Oct. 15, 1986, 86-2 C.P.D. ¶ 429.

Although Viereck maintains that the three-sided honing machine column is considered to have a box design, none of the documents submitted by Viereck to justify its interpretation of that term either individually or collectively supports the conclusion that the machines it offered comply with the box design requirement. For instance, that the manufacturer of a power squaring shears describes the three-sided bed of that tool as a box-type does not dictate the conclusion that in the machine tool industry, generally--and with reference to the vertical column of a honing machine, specifically--the term "box design" refers to both three- and four-sided structures. Moreover, these documents fail to show that the three-sided column design offered by the protester meets what its own "comparative design study" states to be "[t]he true criteria necessary to determine the suitability of a structure" that is, "the degree that [the structure] must resist deformation at rated loads."

The solicitations state that the machine must include all components, parts and features necessary to meet the specified performance requirements. Concerning honing accuracies, the solicitations require that the machines be capable of honing the outer cylinder of an F-4 aircraft main landing gear to produce finished bores with an out-of-round (measured at random intervals throughout the length of the bore) not exceeding certain tolerances.

The Air Force observes, and the protester does not deny, that the Navy contracts Viereck submitted as evidence of its compliance with the subject solicitations' specifications do not require the degree of honing accuracy called for in the subject solicitations. Thus, the acceptability of Viereck's machines for the Navy's requirements is irrelevant for purposes of showing compliance with the specifications in this case. Further, neither the squaring shears machine brochure nor Viereck's "comparative design study" shows that the three-sided vertical column of the machines it offered provides the specified structural rigidity required to meet the honing accuracy tests. We find, therefore, that the protester has failed to show that the term "box design" as used in the solicitations was ambiguous or that it was, in fact, prejudiced in preparing its proposal because the term was not defined in the solicitation.

In this connection, we note that Viereck's protests, citing the decision of our Office in Viereck Co., B-209215, Mar. 25, 1983, 83-1 C.P.D. ¶ 287, insinuate that the solicitations were overly restrictive because by specifying a column having a box design, the solicitations use a design requirement as opposed to a performance requirement. The protester further expresses the view that the Air Force "has been attempting to sole source this procurement to Barnes Drill Company." As support for this assertion, Viereck observes that since the previous solicitations did not require a box design column, the reason allegedly given by the agency for canceling those solicitations--i.e., that the facility's needs had diminished--is spurious since approximately 1 month later, the subject solicitations were issued with the requirements for box design columns and capability to interface with the existing Barnes coolant system as the only major changes. The agency responds that the reason stated by the protester for the cancellation of the prior solicitations is untrue and denies that it was attempting to "sole source" the procurement to Barnes.

On the one hand, Viereck's protest that the use of a design-type requirement in the RFPs purchase specification unduly restricted competition is untimely since it constitutes an allegation of a solicitation defect apparent on the face of the solicitation which, under our Bid Protest Regulations, must be raised prior to the closing date for receipt of proposals. 4 C.F.R. § 21.2(a)(1) (1987). On the other hand, if the allegation is based on the protester's stated belief that its offers complied with this solicitation requirement, and it was, therefore, unaware of the restrictive interpretation placed on it by the Air Force until it was notified of the rejection of its offers, the protest basis is without merit.

When a protester challenges specifications as being unduly restrictive, the contracting agency must make a prima facie showing that the agency requires the restriction to meet its actual needs. If the agency makes the required showing, the burden shifts to the protester to show that the requirement is clearly unreasonable. American Science and Engineering, Inc., B-225516.2, Mar. 5, 1987, 87-1 C.P.D. ¶ 252.

The protester has not shown that the use of a four-sided box-type column is unique to Barnes' machines and, in fact, the record suggests otherwise. Moreover, in specifying the required honing accuracies, the Air Force clearly stated the government's actual needs for structural rigidity (the criterion for determining structural suitability) in the honing machines' vertical column in terms of performance requirements. The protester has not shown that, contrary to

the agency's assertions, the machines it offered, in fact, meet the government's actual needs in this instance or that the requirement is unreasonable.

The protest is denied.

for Seymour Efros
Harry R. Van Cleve
General Counsel